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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,172	09/29/2003	Martin L. De Land	205541-9014	1951

7590 07/14/2004

Michael Best & Friedrich LLC
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EXAMINER

TRAN, KHOA H

ART UNIT	PAPER NUMBER
3634	

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/674,172	Applicant(s) DE LAND ET AL.	
	Examiner Khoan Tran	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on a prel.amdt. 04/07/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-35 and 45-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-35 and 45-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09/29/03</u> . | 6) <input type="checkbox"/> Other: _____ |

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 23-35 and 45-48 are rejected under the judicially created doctrine of double patenting over claims 1, 2, 7, 9, and 12 of U. S. Patent No. 6,659,295 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent. The U. S. Patent No. 6,659,295 discloses all limitations of the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3634

Claims 23, 25-29, 35, 45, and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Howard (U.S. Patent No. 5,611,442). Howard discloses a shelving/displaying system (10) comprising

a horizontal base (14)

two spaced apart upstanding vertical posts (15);

a general top and bottom tracks (35 and 36) adapted to extend and secure between two posts (15) and to a wall (19), each track having a front face and a plurality of apertures (40) in the front face, see Figure 2, the track apertures running along at least a portion of the length of the track;

at least two generally vertical support/display member (52) having brackets (41, 42) associated therewith and adapted to extend and removably secure between the top and bottom tracks (35 and 36), each support having a plurality of vertically spaced apart apertures (65) running along a front surface of the length of the vertical support/ display member; and a plurality of fixtures (58) having associated brackets (67) that removably secured in the front surfaces of the support/display member.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3634

Claims 24, 47, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard (U.S. Patent No. 5,611,442) as applied to claims 23, 25-29, 35, 45, and 46 above, and further in view of Nook (U.S. Patent No. 5,439,123). Nook teaches a shelving/displaying system having at least one panel partitions (22), the partition having a top edge secured to a groove of a top track. See Figure 1. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide the shelving/display system of Howard with a top track and partitions as taught by Nook in order to have partitions to separate between the plurality of fixtures on the shelving/displaying system.

Claims 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard (U.S. Patent No. 5,611,442) as applied to claims 23, 25-29, 35, 45, and 46 above, and further in view of Bastian et al. (U.S. Patent No. 6,115,978). Bastian et al. teach the provision of a reinforcing horizontal member (19d) extends between and behind the front surface of the two spaced apart upstanding vertical posts (13 and 14) with an intermediate upright member (not numbered) secured and flushed with the front faces of the pair of support members. See Figures 1-3. It would have been an obvious to one of ordinary skill in the art at the time of the invention was made to modify the upstanding vertical posts of Howard with the provision of reinforcing horizontal member that includes an intermediate upright member as taught by Bastian et al. in order to enable to partition the wall into a smaller size segment between posts.

Claims 32, 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard (U.S. Patent No. 5,611,442) in view of Bastian et al. (U.S.

Art Unit: 3634

Patent No. 6,115,978) as applied to claims 23, 25-29, 30, 31, 35, 45, and 46 above, and further in view of Mitchell (U.S. Patent No. 5,870,867). Mitchell teaches the provision of an intermediate upright member (71) having a plurality of apertures (72) on the front surface that receives a removable fixture (70). See Figure 19. Considering Howard, Bastian et al. and Mitchell, as a whole, at the time of the invention was made, it would have been obvious to one of ordinary skill in the art to further provide the intermediate upright member of Bastian et al. with pluralities of apertures as taught by Mitchell in order to enable the intermediate upright member to have fixtures mounted thereto.

The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. Pritchard et al. is cited to show a shelving/display system that has a similar configurations of design to applicants' invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 9:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun, can be reached on (703) 308-2156. The fax phone number for this Group before a final Office action is (703) 872-9306 and after a final Office action is (703) 872-9327.

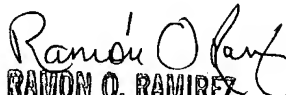
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

Art Unit: 3634

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Khoa Tran

July 09, 2004


RAMON O. RAMIREZ
PRIMARY EXAMINER
ART UNIT 355 3632